



FACULTY OF LAW
UNIVERSITY OF TORONTO

THE PRACTICE OF CRIMINAL LAW

1987

**Edward L. Greenspan, Q.C.
and
Brian H. Greenspan**

LAW LIBRARY

AUG 26 1937

FACULTY OF LAW

UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

FACULTY OF LAW

UNIVERSITY OF TORONTO

THE PRACTICE OF CRIMINAL LAW

1987

Edward L. Greenspan, Q.C.
and
Brian H. Greenspan

THE PRACTICE OF CRIMINAL LAW

1987

Edward L. Greenspan, Q.C.
and
Brian H. Greenspan

1. September 9, 1987
2. September 16, 1987

AN OVERVIEW OF THE CRIMINAL PROCESS

- ~ Court Structure
- ~ Stages in the Process
- ~ Sources of Rules and Procedure

THE ROLE OF THE DEFENCE

- ~ Solicitor/Client Confidentiality
- ~ The Practice of Law as a Confidence Game
- ~ Ethics and the 'Smoking Gun'
- ~ The 'Guilty Client'
- ~ Representation of the 'Unpopular'
- ~ The Victim

3. September 23, 1987

THE ROLE OF CROWN COUSNEL

- ~ Prosecutorial Discretion
- ~ Disclosure
- ~ Interaction with Law Enforcement
- ~ The Effect of Politics on Decision Making

4. September 30, 1987

PLEA NEGOTIATIONS

- ~ The Rationale
- ~ With Whom is a Bargain to be Struck?
- ~ Confirmation of the 'Deal'

5. October 7, 1987

DEFENDING THE MENTALLY ILL

- ~ Fitness
- ~ The Insanity Defence
- ~ Warrant of the Lieutenant Governor and the Advisory Review Board
- ~ From Whom Do You Take Instructions?
- ~ Influencing the Unwilling Accused
- ~ The Use of Psychiatric Opinion

6. October 14, 1987

PREPARATION FOR TRIAL

- ~ Interview with your Client
- ~ Utilizing the Preliminary Hearing
- ~ Investigation by the Defence
- ~ Preparation of Witnesses
- ~ Use and Preparation of Experts
- ~ Preparation of Law

7. October 21, 1987

8. October 28, 1987

EXAMINATION-IN-CHIEF AND CROSS-EXAMINATION

- ~ Lay Witnesses
- ~ Police Witnesses
- ~ Expert Witnesses
- ~ The Accused
- ~ Prior Inconsistent Statements
- ~ Responsibility for the Accuracy of Evidence
- ~ Perjured Testimony

- 9. November 4, 1987
- 10. November 11, 1987

TRIAL BY JURY

- ~ Jury Selection
- ~ Opening Address
- ~ Closing Address
- ~ Charge to Jury
- ~ Jury Deliberations

- 11. November 18, 1987

SELECTED TRIAL PROBLEMS

- ~ The Document Trial
- ~ The Victim of the Trial

- 12. November 25, 1987

SENTENCING AND POST-SENTENCING CONSIDERATIONS

- ~ The Use of Character Evidence
- ~ The Range of Sentence
- ~ The Use of Appellate Authority
- ~ Temporary Absence and Day Parole
- ~ Sentence Calculation

- 13. December 2, 1987
- December 9, 1987

APPEALS

- ~ Release Pending Appeal
- ~ Criminal Appeal Rules
- ~ Appellant and Respondent Factums
- ~ Appellate Advocacy



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

TABLE OF CONTENTS

THE ROLE OF THE DEFENCE

1.	Standards of Conduct for Prosecution and Defense Personnel: A Judge's Viewpoint - Warren E. Burger	1
2.	'The Practice of Law as a Confidence Game' - Blumberg	7
3.	Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions - Monroe H. Freedman	13
4.	'The Criminal Defendant Who Proposes Perjury: Rethinking the Defense Lawyer's Dilemma' - Norman Lefstein	25
5.	Excerpt from Special Lectures of the Law Society of Upper Canada (1969) ..	39

THE ROLE OF THE PROSECUTION

1.	Glanville Williams 'Discretion in Prosecuting' [1965] Crim.L.R. 222	43
2.	American Bar Association, Prosecuting Function and the Defence Function, 1970 (tentative draft)	45
3.	Brian Grosman, <u>The Prosecutor</u> (Toronto: U of T Press, 1969)	49
4.	The Globe and Mail, March 24, 1978, p. 9	54
5.	Statement by The Honourable R. Roy McMurtry, Attorney General for Ontario re: Francis Fox, February 23, 1978	56
6.	The Times, May 11, 1981	66
7.	Brian Grosman, <u>The Prosecutor</u>	69
8.	Christmas Humphreys 'The Duties and Responsibilities of Prosecuting Counsel [1955] Crim.L.R. 739	75
9.	Excerpts from the Special Lectures of the Law Society of Upper Canada (1969)	82

PLEA NEGOTIATIONS

1.	Enker, 'Perspectives on Plea Bargaining'	84
2.	Verdun-Jones and Cousineau, 'Cleansing the Augean Stables: A Critical Analysis of Recent Trends in the Plea Bargaining Debate in Canada'	104
3.	Meltsner and Schrag 'Negotiating Tactics for Legal Services Lawyers'	114
4.	Principles Applicable to Plea Discussions, June 30, 1972	121

EXAMINATION-IN-CHIEF AND CROSS EXAMINATION

1.	Martin, G.A., 'The Examination of Witnesses'	124
2.	<u>Regina v. Bencardino and Decarlo</u> , (1973), 15 C.C.C. (2d) 342	143
3.	Ratushny, E., 'Basic Problems in Examination' :	146

Cont'd ...

4.	Sedgewick, J., 'Recurring Trial Problems'	151
5.	Wellman, F.L., 'The Art of Cross-Examination'	171
6.	Schwartz, L.E., 'Proof, Persuasion and Cross-Examination'	181
7.	Lustgarten, E., Comment from ' <u>The Lizzie Borden 'Axe Murder'</u> '	190

TRIAL BY JURY

1.	Greenspan, B.H., Excerpt from 'Trial on Indictment', Bar Admission Criminal Procedure, 1983-84	196
2.	'Recipe for a Jury' in <u>Ecology Today</u> (May, 1973)	202
3.	Mossman, K., 'Jury Selection: An Expert's View'	215
4.	Martin, G.A., Excerpt from 'Closing Argument to the Jury for the Defence in Criminal Cases' in (1967), 58 J. of Crim.Law, Crimin. and P.S. 2	217
5.	Maloney, A., 'Address to the Jury in Criminal Cases' in 35 Can.Bar Rev. 373.	223
6.	Levy, E.J., 'Closing Address for Defence Counsel' 24 Crim.L.Q. 81	226

SENTENCE AND POST SENTENCE CONSIDERATIONS

1.	D.A. Thomas, <u>Principles of Sentencing</u> (Heinemann: London, 1979)	239
2.	E.L. Greenspan, 'The Role of the Defence Lawyer in Sentencing' <u>New</u> <u>Directions in Sentencing</u> (Toronto: Butterworths, 1980)	250
3.	J. Hogarth, Sentencing Checklist	258
4.	A.S. Manson and D.P. Cole, 'Representation After Sentencing', Current Criminal Law Evening Sessions, 1978	262
5.	Current Criminal Law Evening Sessions Panel on 'Post Sentence Considerations', 1978	285

.

